IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

WP(C).No. 29319 of 2007(M)

PETITIONER:

P.H.SHAJAHAN, S/O P.M.HAMEED,
AGED 35 YEARS, PATHALUPURAYIDATHIL,
MUKKADA P.O., PRESENTLY RESIDING AT
PATHALUPRAYIDATHIL, ERUMELI P.O.,
KOTTAYAM DISTRICT.

BY ADV. SRI.SUNIL V.MOHAMMED

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO HOME(H)DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR GENERAL OF POLICE,
THIRUVANANTHAPURAM.

3. THE COMMANDANT,
KERALA ARMED POLICE 5TH BATTALION,
MANIYAR, PATHANAMTHITTA.

BY GOVERNMENT PLEADER SRI.BEJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI, J.

W.P.(C).No.29319 of 2007 M

Dated this the 11th day of October, 2007.

JUDGMENT

The petitioner entered service as a Police Constable on 25.1.1996. He was directed to undergo mandatory training which he completed on 15.11.1996, according to him. According to the petitioner, probation started on 16.11.1996.

2. Apparently, even when the petitioner was undergoing training, he applied for leave without allowance for taking up employment abroad and this was sanctioned by the Government as per G.O.(P)No.4483/96 with effect from 3.12.1996. The petitioner's probation commenced on 16.11.1996 and he proceeded on leave without allowance on 3.12.1996, within a month of commencement of the probation.

3. Petitioner did not complete the leave period, but cancelled a portion of the same and sought to rejoin in 1999. In terms of Rule 5 of Appendix XII A of Part II of the Kerala Service Rules, which deals with the conditions under which a person can be permitted to avail of leave without allowance for taking up employment abroad in the case of non-permanent

officer in regular service, who had not completed probation in the entry cadre, leave without allowance may be granted subject to the condition that they will have to start afresh and complete their probation on return from leave. In other words, they will forfeit their services prior to the leave without allowance and they will be treated as new entrants in Government service on return.

4. Apparently, the petitioner was directed to undergo 3 months' refresher course which he attended. But the petitioner did not complete the probation, even after he started the second stint of service. It seems that when the Department found that he was on unauthorised absence with effect from 28.7.1999, on 5.7.2000, a show cause notice was issued to him asking him to explain why his probation should not be terminated. The petitioner submitted an explanation on 12.8.2000. By Ext.P5 order, it was found by the Commandant, his appointing authority, that the explanation offered by the petitioner was not satisfactory and therefore, the petitioner's probation was terminated under Rule 19(a) read with Rule 21 of Part II of the Kerala Service Rules. The

petitioner preferred an appeal against the same which was dismissed as per Ext.P8 order, produced along with I.A.No.13401/07. In Ext.P8, the Deputy Inspector General of Police found that he did not find any reason to interfere with the decision of the Commandant. The petitioner preferred an application for review before the Government. This was rejected under Ext.P6 order dated 17.7.2007. In Ext.P6, the Government states as follows:

> "In the review petition, he has stated that his family consists of his aged parents, sisters, wife and children and they find other no way for their livelihood. The Director General of Police has also recommended that Shri P.H.Shajahan deserves sympathetic consideration. It is pleaded that mercy may be shown on him considering his poor financial conditions."

5. Apparently, taking note of the facts mentioned in the review petition and taking a lenient view, the petitioner was treated as a new entrant and the Government directed him to undergo the training as per the existing norms.

6. It is Ext.P6 which has been challenged by the petitioner on the ground that the Government did not have any jurisdiction to direct him to undergo training and the

Government should have merely said that the petitioner is entitled to be reinstated in service.

7. I heard learned counsel for the petitioner Mr.Sunil Mohammed and Mr.Nandakumar, learned Senior Government Pleader.

8. In my opinion, the contention of the petitioner is thoroughly misconceived. Firstly, the petitioner is not entitled to challenge Ext.P6 order, which actually confers a benefit on him. It must be remembered that the Government was exercising a power of review under Rule 36 A of the Kerala Police Departmental (Enquiry, punishment and Appeals) Rules. It was obviously within the jurisdiction of the Government to come to the conclusion that there are no grounds for reviewing the orders passed by the subordinate authorities. In fact, the Government in Ext.P6 affirmed the finding in Exts.P7 and P8, the original orders and the order of the first appellate authority. The Government had only taken a lenient view and directed the petitioner to be reinstated in service. In doing so, the Government had imposed a condition. Significantly, the condition is even otherwise

applicable to the petitioner, inasmuch as that the petitioner had rejoined duty as a fresh hand, in which case, it is Rule 5 of Appendix XII of Part I of the Kerala Service Rules, which is applicable. In such circumstances, even if the Government had not so specifically stated, the petitioner would be liable to be treated as a fresh entrant in terms of Rule 5 as mentioned above.

For all these reasons, I do not find any illegality or infirmity in Ext.P6, much less an error of jurisdiction warranting interference with the said order passed by the Government. Writ petition, therefore, fails and it is dismissed.

Sd/-

(V.GIRI)

JUDGE

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P.S. To Judge